the discretion of the court may defeat the vendee's bill. See authorities collected in WILLISTON ON CONTRACTS, Vol. II, Sec. 791. In regard to the principal case, since the South Dakota court has not hitherto committed itself to a policy of strict construction, this discretionary power might well have been exercised in favor of the vendee. The sum forfeited was not large, it is true, but he had acted in good faith, payment had been made in a form reasonably common in business dealings, and there was no evidence of fluctuating land value or other undue hardship on the vendor. The case may well be contrasted with *Compton* v. *Weber,* (Ill., 1921), 129 N. E. 764, a recent Illinois case, in which a vendor to whom $3,000 of a $25,000 purchase price had been paid, refused to accept a check in payment of the balance, although that form of payment had been accepted for the prior installment, and demanded legal tender at so late an hour that he well knew it could not be procured. The Illinois court, although committed to the doctrine of strict construction, refused to countenance what it termed "a sharp business trick" by the vendor, especially since the latter had, by accepting a check for the prior payment, led the vendee to believe that the same form of payment would be accepted again. In the Illinois case the sum which would have been forfeited was greater but on principle it would seem that the principal case should reach the same result.

STATUTORY CONSTRUCTION—U. S. MAIL BOX NOT A "POST OFFICE," "BRANCH POST OFFICE," OR "POST OFFICE STATION."—A copy of a summons, complaint, affidavits, and order for publication which had been sealed up in an envelope directed to defendant, a foreign corporation, were deposited in a letter box maintained by the United States government in an office building. A statute authorized the order of publication for constructive service to direct a mailing at "a post office," "branch post office," or "post office station." *Held,* defendant's motion to vacate and set aside the judgment should be granted because mailing the summons by placing it in a post office box did not comply with the requirements of the statute. *B. Berman, Inc.* v. *Amer. Fruit Distr. Co. of Calif.,* (N. Y., 1921), 186 N. Y. Supp. 376.

By looking at the code as a whole, the court concluded that the Legislature intended to allow the summons to be mailed only in the three sorts of places named. The term "letter box" was known to the legislators since they used it in a different connection as pointed out by the code itself in section 797. Consequently it seemed to the court that in the case of serving a summons the legislative intent that it could not be placed in a mail box was very clearly expressed. A similar method of statutory construction is found in *McArthur* v. *Moffett,* 143 Wis. 564.

TRIAL—INSTRUCTIONS AS TO DAMAGES.—The jury returned a verdict of $1,500,—the amount sued for,—where testimony had been introduced for but $597.90. The trial court instructed the jury that they should allow such damages as the preponderance of the evidence showed the plaintiffs to have sustained, not to exceed the sum of $1,500,—the damages named in the com-

plaint. On review, *held,* by a 5 to 4 decision, the judgment of the lower court should be reversed. *Calbrick* v. *Marysville Water & Power Co.,* (Wash., 1921), 195 Pac. 1027.

The courts have uniformly held that an instruction limiting the damages to the amount claimed in the complaint, is not for that reason erroneous as amounting to an intimation that the jury shall find for the full amount claimed. *Carpenter* v. *Walker,* 170 Ala. 659; *Chesapeake & O. Ry. Co.* v. *Carnahan,* 118 Va. 46; *Caughey* v. *Peoria Ry. Co.,* 164 Ill. App. 455. On the other hand, an instruction upon the subject of damages is erroneous which does not limit the jury to the evidence as the basis of fixing the compensation to be awarded. *Presley* v. *Kinlock-Bloomington Telephone Co.,* 158 Ill. App. 220; *Ill. So. Ry. Co.* v. *Hamill,* 226 Ill. 88; *Weigel* v. *McCloskey,* 113 Ark. 1; *St. Louis, I. M. & S. Ry. Co.* v. *Bright,* 109 Ark. 4. The instructions of the lower court in the principal case were framed upon the principles just stated, and included nothing which was affirmatively incorrect. The question resolves itself then to a consideration of whether the court should have instructed the jury specifically that the evidence could not permit of more than $597.90 damages. The dissenting judges in the principal case said that to require the courts at all times to keep in mind the details of all the testimony and to instruct the jury at its peril as to the maximum sum testified to by any witness would place unnecessary burdens upon the court. The objection, however, would apply equally well to directed verdicts and non-suits. It is a general principle of law that the jury must assess the damages in accordance with the testimony in the case, 13 CYC. 235-238, but the jury should have the guidance of the court in the form of instructions on the law of damages applicable to the facts shown, as will enable them to understand and act upon the evidence. 4 SEDGWICK ON DAMAGES 2661. The instructions should state the law as to the elements of damages in sufficient detail and not by too general a charge. *Southern Ry. Co.* v. *Cochran,* 149 Ala. 673. The question here would seem to be whether the statement made by the court as to the damages was so general as to be misleading in view of the evidence which specifically limited the recovery to a point below the claim in the complaint. Courts are not expected to give idle and irrelevant instructions, and a jury might very likely assume that the judge would not name $1,500 as the limit of the verdict unless he supposed that limit to be within the scope of their deliberations. The fact that they exceeded the amount shown in evidence but observed the limit specified by the judge, lends color to the view that the instruction was misleading.

TRUSTS—INCOME FOR SUPPORT—DISPOSAL OF UNEXPENDED ACCUMULATION OF INCOME.—Testatrix left property in trust for her son, directing trustees to use the income "or as much as may be necessary" for the support of her son during his life, the income from the estate to be used "solely" for the son's personal benefit and not for the support of his wife or son. In a bill for construction of the will, *held,* not a vested equitable life estate in the whole income, and that on death of the beneficiary the unexpended accumu-